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June 6, 2006

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6/17/08  
LORETTA A. PRESKA  
U.S. DISTRICT JUDGE  
S. D. N. Y.

Honorable Loretta A. Preska  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Suite 1320  
New York, NY 10007

Re: *Amnesty International USA, et al. v. Central Intelligence Agency, et al.*, 07-CV-5435 (LAP)

Dear Judge Preska,

We represent Plaintiffs in the above-referenced action. We write to notify the Court of our filing of an amended complaint, dated June 6, 2008. Plaintiffs' amended complaint, attached as Appendix A,<sup>1</sup> incorporates a request for certain documents responsive to Plaintiffs' original FOIA requests. These documents are enumerated in a supplemental FOIA request filed upon agreement of the parties during negotiations subsequent to the commencement of this litigation.

This action was originally filed on June 7, 2007. Subsequent to the filing, Plaintiffs and Defendants engaged in extensive negotiations to complete the processing of Plaintiffs' requests and resolve scheduling-related issues. At an impasse in the negotiations, the CIA refused to include in the *Vaughn* index a list of specific documents responsive to Plaintiffs' requests that were known or believed to exist by Plaintiffs. In an effort to finalize the CIA briefing schedule while still ensuring that the CIA would provide a *Vaughn* index for certain officially or publicly acknowledged records, Plaintiffs filed a supplemental FOIA request with the CIA seeking seventeen specific documents or categories of documents known or believed to be in the CIA's possession. The supplemental FOIA request ("CIA Specific Documents Request"), attached as Appendix C, was filed on December 28, 2007.

Counsel for Defendant CIA agreed to help guide the CIA Specific Documents Request through the administrative process in order to facilitate litigation of any disputed issues as part of the agreed-upon CIA briefing schedule.<sup>2</sup> But the CIA has provided no

<sup>1</sup> A redlined version of the Amended Complaint indicating the changes from the Complaint is also attached for the convenience of the Court as Appendix B.

<sup>2</sup> Letter from Kyle DeYoung, WilmerHale, LLP, to the Honorable Loretta A. Preska, (Dec. 5, 2007) (hereinafter DeYoung Letter, Dec. 5, 2007).

substantive response to the CIA Specific Documents Request to date. In the only communication from Defendant CIA, attached as Appendix D, the CIA agreed to process the CIA Specific Documents Request and to grant a fee waiver.<sup>3</sup>

In a Stipulation agreed upon by Defendant CIA and Plaintiffs, attached as Appendix E, and filed simultaneously with Defendant CIA's motion for summary judgment, the CIA agreed to "not oppose Plaintiffs' application for leave to amend their Complaint in order to include the Specific Documents Request in this litigation." Stipulation and Order Between Plaintiffs and the Central Intelligence Agency Regarding Procedures for Adjudicating Summary Judgment Motions, ¶ 19, Apr. 21, 2008 ("CIA Stipulation"). On June 4, Plaintiffs informed counsel for Defendant CIA that they would be amending the complaint pursuant to the CIA Stipulation to which counsel for Defendant CIA consented.

Moreover, in a phone call with Your Honor's law clerk, we were advised to directly file the amended complaint with an explanatory letter and forego filing a motion for leave to amend the complaint. Accordingly, based on our communications with Your Honor's law clerk as well as the consensual nature of this amended complaint, we understand that a formal motion for leave to amend is unnecessary.<sup>4</sup> We have thus electronically filed an amended complaint and served Defendant CIA electronically and by federal express.

*Filing of the Amended Complaint is approved.* Sincerely,  
  
 SO ORDERED   
 Emilou MacLean

MARGARET L. SATTERTHWAITE and MARTHA J. JOHNSTONE, Attorneys for Amnesty International USA and Washington Square Legal Services, Inc.  
 LORETTA A. PRESKA, UNITED STATES DISTRICT JUDGE  
 Jeannette A. Vargas, Brian M. Feldman and Emily E. Daughtry, Attorneys for CIA

*June 16, 2008*

<sup>3</sup> Letter from Scott Koch, Information and Privacy Coordinator, Central Intelligence Agency, to Margaret L. Satterthwaite, Director, International Human Rights Clinic, Washington Square Legal Services (Jan. 30, 2008).

<sup>4</sup> Rule 15 of the Federal Rules of Civil Procedure, which allows amendment with leave of court, states, "a party may amend its pleading . . . with the opposing party's written consent . . ." See Fed. R. Civ. P. 15(a)(2).<sup>4</sup> This action is in an early phase of litigation and the Amended Complaint was anticipated by the parties prior to the commencement of this round of briefing. The substance of the changes was agreed upon by the parties as a means of overcoming an impasse in negotiations. DeYoung Letter, Dec. 5, 2007, at 2. Defendant CIA consented to this agreement in the written CIA Stipulation executed by the parties. CIA Stipulation ¶ 19.